

STATE OF MICHIGAN
COURT OF APPEALS

TURNING LEAF HOMES, INC.,

Plaintiff-Appellant,

v

STEPHANIE GRADY,

Defendants-Appellee,

and

EUGENE GRADY,

Defendant.

UNPUBLISHED

April 27, 2006

No. 255322

Kent Circuit Court

LC No. 03-000975-CH

Before: Whitbeck, C.J., and Bandstra and Markey, JJ.

MARKEY, J., (dissenting)

I respectfully dissent and would reverse.

Clearly, Stephanie Grady's attorney agreed to the terms of the original settlement agreement and conveyed this agreement in writing to plaintiff's counsel. The trial court's factual finding regarding the scope of a lawyer-client relationship is reviewed for clear error. *Michigan Nat'l Bank of Detroit v Kellam*, 107 Mich App 669, 678-679; 309 NW2d 700 (1981). An attorney does not have, by virtue of a general retainer, actual authority to settle a case on behalf of a client. *Nelson v Consumers Power Co*, 198 Mich App 82, 85; 497 NW2d 205 (1993). But, apparent authority arises where the principal's actions and conduct lead a third party to reasonably believe that the agent has actual authority:

Generally, when a client hires an attorney and holds him out as counsel representing him in a matter, the client clothes the attorney with apparent authority to settle claims connected with the matter. Thus, a third party who reaches a settlement agreement with an attorney employed to represent his client in regard to the settled claim is generally entitled to enforcement of the settlement agreement even if the attorney was acting contrary to the client's express instructions. In such a situation, the client's remedy is to sue his attorney for professional malpractice. The third party may rely on the attorney's apparent authority unless he has reason to believe that the attorney has no authority to negotiate a settlement. [*Nelson, supra* at 89-90 (citations omitted).]

On the basis of *Nelson*, plaintiff argues that because defendants' attorney corresponded with plaintiff's attorney saying that defendants would agree to settle the matter under the terms of the settlement agreement, defendants were bound by that representation under the apparent authority espoused in *Nelson*. The facts of this case support the accuracy of plaintiff's argument. At all times, defense counsel was serving as the attorney for both the Gradys. Moreover, there is no evidence whatsoever that the Gradys did not themselves understand and apparently want defense counsel's representation. So, there can be no viable argument that throughout these negotiations, defense counsel had the apparent authority to settle all the claims connected with the matter in accord with *Nelson*.

Additionally, *Nelson, supra*, applies MCR 2.507(H). MCR 2.507(H) provides:

An agreement or consent between the parties or their attorneys respecting the proceedings in an action, subsequently denied by either party, is not binding unless it was made in open court, or unless evidence of the agreement is in writing, subscribed by the party against whom the agreement is offered or by that party's attorney.

Applying the above rule to the facts in *Nelson*, this Court concluded that defendant was bound by defense counsel's apparent authority because a signed agreement confirmed defense counsel's apparent authority to settle the case for defendant. *Id.*

As in *Nelson*, defendant's counsel sent a copy of a negotiated settlement agreement signed by Eugene Grady and a proposed consent judgment order she signed on defendants' behalf. The settlement agreement, stated, inter alia, that it was entered into "by and between Turning Leaf Homes, Inc. ("Turning Leaf"), a Michigan corporation, and Eugene Grady and Stephanie Grady (collectively the "Gradys")." The settlement agreement also provided that a consent judgment may be entered "against the Gradys" in the event that they failed to make timely payments on the amount owed under the agreement. The proposed consent judgment stated that "a Consent Judgment in the amount of \$130,000 is hereby entered in favor of Turning Leaf Homes, Inc. and against Eugene Grady and Stephanie Grady. . . . in accordance with a certain Settlement Agreement executed by and between Turning Leaf Homes, Inc., Eugene Grady, and Stephanie Grady." In a letter sent with the settlement agreement, defense counsel noted that Stephanie Grady's signature was missing from the documents but explained that "[w]e are working to obtain her signature." Defense counsel further explained that "we wanted to get the documents to you and the payment of \$9,710." Thus, plaintiff's argument that defendants' attorney agreed to the settlement agreement on behalf of both her clients is accurate notwithstanding defense attorney's September 16, 2003 letter indicating that Stephanie Grady "refuses to be a party to the consent judgment."

Under the plain language of MCR 2.507(H) defense counsel agreed to settle the matter on behalf of both defendants and set forth the terms of the agreement in writing. That is all that MCR 2.507(H) requires. So, in my opinion, we need not analyze the matter further and I would reverse.

/s/ Jane E. Markey